IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 6666 of 2007(R)

PETITIONER:

VIMALA M.M.,
MUNDACKAL HOUSE, MANAKULANGARA P.O., KODAKARA,
NOW WORKING AS NON-VOCATIONAL TEACHER (BIOLOGY) IN
G.V.H.S.S., VADAKKANCHERRY.

BY ADV. SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SRI.T.R.RAJESH
SMT.K.P.GEETHA MANI

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVT., GENERAL EDUCATION
(SPECIAL CELL) DEPARTMENT, GOVT. SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR,
VOCATIONAL HIGHER SECONDARY EDUCATION,TRIVANDRUM.

BY GOVERNMENT PLEADER SMT. LAKSHMI RANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 6666/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE CHART SHOWING THE DETAILS OF THE SERVICE OF THE PETITIONER FROM 5.1.90 ONWARDS.

EXT.P2. COPY OF THE ORDER DT. 15.3.02 ISSUED BY THE RESPONDENT

EXT.P3. COPY OF THE CERTIFICATE DT. 18.4.02 ISSUED BY THE PRINCIPAL OF THE SCHOOL

EXT.P4. COPY OF THE REPRESENTATION DT. 31.1.06 BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P5. COPY OF THE G.O. (Rt) NO.1408/2006/GL.Edn. DT. 31.3.06.

EXT.P6. COPY OF THE JUDGMENT DT. 29.11.06 IN W.P.(C) NO.25852/2006

EXT.P7. COPY OF THE G.O. (Rt) NO.339/07/Gl.Edn. DT. 23.1.07.

EXT.P8. COPY OF THE CIRCULAR DT. 24.4.98.

EXT.P9. COPY OF THE CIRCULAR DT. 30.4.03.

EXT.P10. COPY OF THE CIRCULAR DT. 28.4.04

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 6666 OF 2007

Dated this the 24th day of May, 2007

J U D G M E N T

This writ petition unravels the sad plight of a Post Graduate who has been working as a Non-vocational Lecturer in various Government institutions for the last more than 17 years, albeit in short as well as long spells, without the benefit of regularisation.

2. The primary prayer made in this writ petition is to issue a writ of mandamus or such other appropriate writ or direction to respondent No.1 to regularise petitioner's appointment as Non-vocational Lecturer with effect from the date of her first appointment , viz January 5, 1990.

3. Petitioner had approached this Court on an earlier occasion praying for a similar relief. On that occasion, this Court had directed respondent No.1 to take a decision in the matter keeping in view the entire aspects of the case as well as the question whether the benefit of regularisation as provided under Rule 39 of KS & SSR can be granted to the petitioner. Thereafter, the Government has passed Ext.P7order, which is impugned in this writ petition.

4. A brief reference to some of the essential facts may be necessary to

consider the question whether the petitioner is entitled to get the benefit of regularisation of her service. As mentioned earlier, petitioner is a Post Graduate in Botany. She had passed her B.Ed degree in the year 1989. She passed the State Eligibility Test in June 2000 and thus became fully qualified to hold the post of Non-Vocational Lecturer.

5. On June 5, 1990 petitioner was appointed as Non-vocational Lecturer in Government Vocational Higher Secondary School at Nandikara. She worked in that institution till February 28, 1990. Ext.P1, which is a statement containing the details of petitioner's service career, shows that she was again appointed in the above institution with effect from August 1, 1990. She worked till April 20, 1991. Her long career continued thereafter, during the course of which she worked in several institutions, of course for short as well as long durations. Finally she was appointed as vocational lecturer in Government Vocational Higher Secondary School, Wadakkanchery with effect from June 5, 2006. It is on record that she continued in that school till March 31, 2007. She now faces the prospect of being sent out of service on the ground that she has not been given regular appointment till date.

6. The contention of the respondents is that she had all along worked either as a guest lecturer or as a candidate sponsored by Employment

Exchange for short durations. This fact is not denied by the petitioner. But she has continued to serve the Government for the last more than 17 years either as a guest lecturer or as a candidate sponsored by Employment Exchange. In Ext.P7 the Government has taken the view that the service of a guest lecturer cannot be treated as provisional service. It is true, the petitioner did not have continuous provisional service of 10 years to her credit from the date of her initial appointment. In this context, the Government has taken shelter under the observations made by their Lordships of the Supreme Court in Umadevi's case [2006 (4) SCC 1]. Yet another reason cited by the Government to reject the claim of the petitioner is that she had been appointed as non-vocational teacher by the Employment Exchange during the academic year 1993-94, 1997-98, 2001-02, 2003-04, 2004-05 & 2005-06 in terms of the conditions stipulated under Rule 9(a) of KS & SSR. Undoubtedly, a person appointed under the said Rule "can be allowed to continue in service subject to availability of vacancy, in case the institution in which regular annual vacations are allowed, till the closing date of the institution for the annual vacation, or till a candidate advised by the Public Service Commission joins duty, whichever is earlier." In Ext.P7, the Government further noticed that the petitioner had, to her credit, more than 31 months service as a candidate

sponsored by Employment Exchange in 6 spells. Over and above this, petitioner had also worked as guest lecturer as indicated earlier.

7. It is beyond controversy that petitioner has served the Government for more than 16 years as a guest lecturer or as a candidate sponsored by Employment Exchange. The short question is whether the petitioner should be denied the benefit of regularisation?

8. In the peculiar facts and circumstances of the case, I am of the view that the answer has to be in the affirmative. It is to be noticed that petitioner has not gained entry in service, through back door at any point of her career. Exts.P8, P9, P10 would show that she had been given appointment after a due process of selection. The Employment Exchange had sponsored her, apparently considering her eligibility and seniority.

9. It is also pertinent to note that uncertainty prevailed in the institutions at the higher education level immediately after introduction of Plus 2 system in the State. There were dearth of qualified teachers. The Government had issued several orders/circulars to tide over the situation. Services of several high school teachers had to be marshaled in the higher secondary section to work in the post of teachers in the Plus 2 courses. Several teachers who did not have the requisite qualifications to work

as Higher Secondary School Teachers were allowed to do so because of the then prevailing situation. In fact the Supreme Court had come to the rescue of many such teachers. Petitioner happened to work in the Vocational Higher Secondary School during that period.

10. Smt. Seemanthini, learned senior counsel, points out that ironically petitioner did have all the requisite qualifications to work as a non vocational Lecturer; but unfortunately she could not get a regular placement for no fault of hers. If at all any fault could be attributed to the petitioner, it was only that she did not fall in the category of those teachers who got the benefit of the order of the Supreme Court. For that sole reason petitioner cannot be left in the lurch and therefore she has to be given the benefit of regularisation.

11. In my view, this is a fit case where the Government should have invoked the power under Rule 39 of the KS & SSR. Curiously the Government rejected the request made by the petitioner to invoke Rule 39 on the spacious plea that petitioner did not seek a permanent job elsewhere while she was being engaged by the Government on temporary basis. According to the Government a large number of

similarly placed candidates had worked in the Department during that period. The Government had not given any hint to the petitioner that her services would be regularised. The order further goes on to say that the Government or the Department did not prohibit the petitioner from seeking a permanent employment.

12. The above view taken by the Government in response to the request made by the petitioner to invoke the power under Rule 39 is totally callous and apathetic, to say the least. The Government ought to have kept in view the fact that the petitioner has spent her prime of youth in serving the Government. She is now in her early 40's. As submitted by the learned senior counsel, petitioner had all along been hoping that her services would be regularised, particularly since she was being engaged in service almost continuously for the last more than 16-17 years. The Government ought to have viewed the scope and ambit of Rule 39 from a wider and meaningful perspective. In any view of the matter I am satisfied that petitioner is entitled to get the benefit of regularisation. Similarly the reasoning given by the Government that several other similarly placed candidates had worked

in the Department for short duration as Guest Lecturer or as an employment Exchange sponsored candidate is not an answer to the question whether the petitioner was entitled to get the benefit of Rule 39. I have carefully perused the judgment of their Lordships in Umadevi's case (Supra). I do not find that any of the observations of their Lordships would justify the stand taken by the Government in this particular case. As mentioned earlier, petitioner did not enter the service through back door. She had worked in temporary vacancies, of course as a guest lecturer or as a provisional hand sponsored by the Employment Exchange.

Having regard to the totality of circumstances, Ext.P7 is quashed. Respondents are directed to regularise petitioner's service as non-vocational lecturer (Biology) with effect from January 5, 1990. But it is made clear that she will not be entitled to get arrears of salary or such other service benefits for the period from 1990 till March 31, 2007. Appropriate orders in this regard shall be passed within one month from the date of receipt of a copy of the judgment.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007